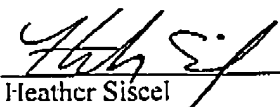RECEIVED
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Attorney Docket: 20184/NNR11US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor	: Lauckhart	)
		)
		)
U.S. Serial No.	: 09/695,216	)
Filed	: October 25, 2000	)
		)
		)
Title	: SYSTEM AND METHOD FOR ESTIMATING PREVALENCE OF DIGITAL CONTENT ON THE WORLD-WIDE-WEB	)
		)
		)
		)
		)
Art Unit	: 2442	)
		)
Examiner	: John Moore Jain Macilwinen	)

I hereby certify that this document is being deposited with the United States Patent and Trademark Office via facsimile on this date:

October 3, 2012

Heather Siscel

BRIEF ON APPEAL

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the Notice of Appeal filed on May 16, 2012, and the Notice of Panel Decision from Pre-Appeal Brief Request mailed July 3, 2012, in connection with the above-identified patent application, Applicants respectfully submit the instant Brief on Appeal in accordance with 37 C.F.R. § 41.37.

I.   Real Party in Interest

The Nielsen Company (US), LLC is the real party in interest to this appeal. The above-referenced patent application has been assigned to The Nielsen Company (US), LLC

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in an assignment recorded in the United States Patent and Trademark Office ("USPTO") at

Frame 0110 of Reel 023388.

II.   Summary of the Claimed Subject Matter

Although specification citations are inserted below in accordance with C.F.R.

41.37(c)(1)(v), these citations are merely examples of where support may be found in the

specification for the terms used in this section of the brief. There is no intention to in any

way suggest that the terms of the claims are limited to the examples in the specification.

Although, as demonstrated by the citations below, the claims are fully supported by the

specification as required by law, it is improper under the law to read limitations from the

specification into the claims. Pointing out specification support for the claim terminology as

is done here to comply with rule 41.37(c)(1)(v) does not in any way limit the scope of the

claims to those examples from which they find support. Nor does this exercise provide a

mechanism for circumventing the law precluding reading limitations into the claims from the

specification. In short, the specification citations are not to be construed as claim limitations

or in any way used to limit the scope of the claims.

A. Independent Claim 1

Independent claim 1 is directed to a system for estimating a number of times digital

content has been displayed via a network 100. (See, e.g., Page 3, lines 6-9). The system

includes an estimating device 210 to determine an estimate of a number of times that a

webpage has been accessed. (See, e.g., Page 9, lines 9-18). The system includes a prober

320 to repeatedly request the webpage and, in response, receive content files. (See, e.g., Page

11, line 17 to Page 12, line 2). The system includes a statistical summarization system 230

that includes a processor. (See, e.g., Page 40, lines 10-19). The statistical summarization

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system 230 is to determine a number of times that a first content object is included in the

content files received in response to the requests. (See, e.g., Page 12, lines 3-9). The

statistical summarization system 230 is to determine a total number of times that the webpage

has been requested. (See, e.g., Page 11, line 17 to Page 12, line 2). The statistical

summarization system 230 is to estimate the number of times that the first content object has

been displayed to visitors of the webpage based on (1) the number of times that the first

content object was included in the content files received in response to the requests, (2) the

total number of times that the webpage was requested, and (3) the estimate of the number of

times that the webpage has been accessed. (See, e.g., Page 15, line 21 to Page 16, line 6).

B. Independent Claim 6

Independent claim 6 is directed to a method for estimating a number of times digital

content has been displayed via a network. (See, e.g., Page 3, lines 6-9). The method includes

repeatedly requesting a webpage and, in response, receiving content files (block 740). (See,

e.g., Page 11, line 17 to Page 12, line 2, Page 44, line 16 to Page 46, line 15). The method

includes determining a number of times that a first content object is included in the content

files received in response to the requests (block 770). (See, e.g., Page 12, lines 3-9, Page 46,

line 16 to Page 47, line 18). The method includes estimating the number of times that the

first content object has been displayed to visitors of the webpage based on (1) the number of

times that the first content object was included in the content files received in response to the

requests, (2) a total number of times that the webpage was requested, and (3) the estimate of

the number of times that the webpage has been accessed (block 770). (See, e.g., Page 15, line

21 to Page 16, line 6, Page 46, line 16 to Page 47, line 18).

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C. Independent Claim 70

Independent claim 70 is directed to a tangible machine readable medium that stores instructions. The instructions, when executed, cause a machine to repeatedly request a webpage (block 740). (See, e.g., Page 11, line 17 to Page 12, line 2, Page 44, line 16 to Page 46, line 15). The instructions cause the machine to determine a number of times that a first content object is included in content files received in response to the requests (block 770). (See, e.g., Page 12, lines 3-9, Page 46, line 16 to Page 47, line 18). The instructions cause the machine to estimate the number of times that the first content object has been displayed to visitors of the webpage based on (1) the number of times that the first content object was included in the content files received in response to the requests, (2) a total number of times that the webpage was requested, and (3) an estimate of the number of times that the webpage has been accessed (block 770). (See, e.g., Page 15, line 21 to Page 16, line 6, Page 46, line 16 to Page 47, line 18).

D. Dependent Claim 75

Dependent claim 75 recites wherein the instructions stored on the machine readable medium cause the machine to estimate the number of times that the first content object has been displayed to visitors by determining a rotation rate for the content object by dividing the total number of times that the webpage was repeatedly requested by the number of times that the first content object was included in the content files received in response to the requests and determining the number of times that the first content object has been displayed to visitors by multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate (block 770). (See, e.g., Page 9, lines 9-18, Page 11, line 17 to Page 12, line 9, and Page 15, line 21 to Page 16, line 6, Page 46, line 16 to Page 47, line 18).

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E. Dependent Claim 80

Dependent claim 80 recites wherein the statistical summarization system 230 is to estimate the number of times that the first content object has been displayed to visitors by determining a rotation rate for the content object by dividing the total number of times that the webpage was repeatedly requested by the number of times that the first content object was included in the content files received in response to the requests and determining the number of times that the first content object has been displayed to visitors by multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate. (See, e.g., Page 9, lines 9-18, Page 11, line 17 to Page 12, line 9, and Page 15, line 21 to Page 16, line 6).

F. Dependent Claim 85

Dependent claim 85 recites wherein estimating the number of times that the first content object has been displayed to visitors comprises determining a rotation rate for the content object by dividing the total number of times that the webpage was repeatedly requested by the number of times that the first content object was included in the content files received in response to the requests and determining the number of times that the first content object has been displayed to visitors by multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate (block 770). (See, e.g., Page 9, lines 9-18, Page 11, line 17 to Page 12, line 9, and Page 15, line 21 to Page 16, line 6, Page 46, line 16 to Page 47, line 18).

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III.   Grounds of Rejection To Be Reviewed on Appeal

The grounds of rejection to be reviewed on appeal are as follows:

A.   The rejections of independent claims 1, 6, and 70 under 35 U.S.C. § 102 as allegedly anticipated by Gupta (U.S. Patent No. 6,487,538).

B.   The rejections of dependent claims 75, 80, and 85 under 35 U.S.C. § 103 as allegedly unpatentable over Gupta (U.S. Patent No. 6,487,538) in view of Alberts (U.S. Patent No. 5,937,392).

C.   The rejection of independent claim 70 under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter.

IV.   Argument

A. None of independent claims 1, 6, or 70 are anticipated by Gupta.

a. Claim 1

The system of independent claim 1 facilitates estimating numbers of times that content objects (e.g., advertisements) have been displayed on webpages. The system of claim 1 performs the estimation of the frequency of advertisements by a monitoring entity that does not have access to content distribution records (e.g., server logs) of content advertising providers. In other words, the system of claim 1 does not rely on the cooperation of the content advertising providers. Specifically, independent claim 1 sets forth a statistical summarization system to **estimate** a number of times that a first content object has been displayed to visitors of a webpage based on (1) a number of times that the first content object was included in content files received in response to requests, (2) a total number of times that the webpage was requested, and (3) an estimate of a number of times that the webpage has been accessed. As explained in the specification, the first content object may be an advertisement that is periodically or aperiodically displayed in a webpage as part of a rotation of advertisement displays. (See, e.g., Page 15, line 21 to Page 16, line 6).

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Gupta does not teach or suggest a system to estimate a number of times that a first

content object has been displayed to visitors of a webpage. Rather, the methods described in

Gupta **have no need to estimate** the number of times that a first content object has been

displayed to visitors of a webpage because Gupta retrieves the actual number of times that an

advertisement was transmitted from a server to a client directly from a log stored at that

server. In Gupta, logs containing information regarding all transmissions (e.g., number, type,

timing of URL requests and transmitted advertisements) are maintained by proxies and web

servers. (See Column 16, lines 48-61). To perform a one-to-one verification of web server

requests to advertisement transmissions by a proxy, Gupta describes cross-checking a

specific URL request from a particular client at a particular time with a transmission of an

advertisement from a web server to the particular client at the particular time. (See Column

17, lines 11-19). Gupta describes performing the cross-checking for every request and

transmission on an analyzed system. By cross-checking this information, Gupta determines

whether an advertisement was actually displayed at that client. (See Column 16, lines 35-41

and Column 17, lines 19-24). In other words, when verifying a proxy, Gupta matches each

transmission of an advertisement identified in the logs of the proxy server to a corresponding

URL request in the logs of a web server. Thus, Gupta retrieves the actual number of times an

advertisement was displayed at a client from a log *without any need to estimate* the number

of times that the advertisement has been displayed. The verification of the proxy server log

does not include any estimating because Gupta has access to the actual data in the logs. As

such, it is unquestionable that Gupta does not anticipate claim 1.

The final Office action of February 16, 2012, admits that Gupta utilizes data retrieved

from a log stored at a client. However, in response to the previously presented argument that

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Gupta does not estimate a number of times that an advertisement is displayed, the Examiner erroneously alleges that actual data obtained from a log stored at a single client is used to extrapolate the number of times an item was displayed to all clients across a system. The final Office action erroneously argues that such extrapolation is shown by Gupta's description of "different sets of content-providers" and "different sets of proxies." (See Office action, pages 2-3). However, the Examiner has taken these portions of Gupta out of context. As explained below, the allegations are in clear error and are not supported by the specification of Gupta.

While Gupta describes "different sets of content-providers" and "different sets of proxies," (See Column 17, lines 30-35) Gupta does not describe using data for one client to estimate data for multiple clients in a system. Rather, Gupta describes "obtain[ing] the hit-count information from different sets of content-providers . . . as well as different sets of proxies." (See Column 17, lines 19-33) (emphasis added). Clearly, obtaining the actual count data from the provider and proxies is not estimating such counts. Indeed, Gupta does not need to estimate because the hit-count information is directly retrieved from the logs stored at the proxies and the web servers. Each hit described in Gupta corresponds to a content-provider providing a page to a proxy that inserts a particular advertisement for a client. (See Column 17, lines 33-35).

Gupta describes cross-referencing the hit counts of advertisements with the obtained actual counts to check whether each proxy is behaving within the industry norm for that particular advertisement. (See Column 17, lines 35-38). Gupta does not teach or suggest that the industry norm is an estimate of the number of times that a content object has been displayed to visitors of a webpage. Gupta describes that the industry norm can be determined

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by a sampling auditing scheme. (See Column 17, lines 39-40). However, Gupta does not

teach or suggest how the sampling auditing scheme determines an industry norm. Rather,

Gupta describes testing a proxy by artificially telling the proxy that no advertisements are

available and obtaining the actual hit information from the logs of the proxy server. The

proxy's claims regarding the hit-rate are statistically examined to determine if the rates are

likely or not. (See Column 17, lines 40-46). A statistical analysis can be used to check the

accuracy of the proxy's reporting by verifying that the number of hits is reduced based on the

artificially unavailable advertisements. Such a statistical analysis is not an estimation of hit

counts because hit-count information reflecting actual transmissions of advertisements is,

again, being analyzed. Furthermore, Gupta does not teach or suggest any estimation of

global values based on this sampling analysis or as part of the statistical analysis.

Accordingly, the Examiner's allegations that Gupta describes extrapolation are not supported

by the description in Gupta. Nowhere does Gupta teach or in any way suggest the

"extrapolation" alleged by the Examiner. Absent the Examiner providing any evidence of

such extrapolation, it is clear that the Examiner is using hindsight to misread teachings into

Gupta in an effort to recite the invention of claim 1. Quite simply, data stored for a client in

Gupta is not used to estimate the number of times an item was transmitted to multiple clients

across a system as alleged in the final Office action. Thus, Gupta does not anticipate claim 1.

In summary, Gupta compares an actual count of the number of times a URL is

requested with the actual number of times an advertisement is displayed to determine if

advertising rates being charged are appropriate. Gupta retrieves this information from logs

stored in servers. Accordingly, Gupta does not teach or suggest estimating and, indeed, has

no need to estimate a number of times that a first content object has been displayed to

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visitors of a webpage. Further, and contrary to the assertion in the final Office action, Gupta does not teach or suggest any extrapolation or estimation of advertisement display. The Examiner's argument is in error because it finds no support in Gupta. Gupta fails to teach or suggest a system to estimate a number of times that a first content object has been displayed to visitors of a webpage as recited in claim 1.

These missing elements not contemplated by Gupta are important. While Gupta must undertake an enormous effort of accessing huge volumes of data representing all hit counts in a network, the system of claim 1 performs an automatic, yet accurate, estimation of the frequency with which the particular objects (e.g., advertisements) are displayed with webpages. Not only is this system more efficient than the brute force approach of Gupta, but significantly, it does <u>not</u> rely on the cooperation of the website/proxy servers and computers. These entities have financial incentives to inflate their hit counts. As such, the process used in Gupta may well lead to inaccuracies. Furthermore, operators of website/proxy servers and computers may be unwilling to cooperate with monitoring entities. Thus, the system of claim 1 constitutes a significant inventive advance over the art presented by Gupta. It solves a problem not recognized by Gupta, namely, how to accurately estimate a number of times content has been displayed without the cooperation of content providers. The system of claim 1 solves this problem in a manner that is neither taught nor suggested by Gupta. As such, independent claim 1 and all claims depending therefrom are allowable over Gupta and the rejections must be reversed.

b. Claim 6

Claim 6 recites a method including <u>estimating</u> a number of times that a first content object has been displayed to visitors of a webpage. As explained above, Gupta compares an

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actual count of the number of times a URL is requested with the actual number of times an advertisement is displayed to determine if advertising rates being charged are appropriate. Gupta retrieves this information from logs stored in servers. Accordingly, Gupta does not teach or suggest estimating and, indeed, has no need to estimate a number of times that a first content object has been displayed to visitors of a webpage. Thus, Gupta fails to teach or suggest the method of claim 6. Accordingly, the rejection of claim 6 and all claims depending therefrom must be reversed.

c. Claim 70

Claim 70 recites instructions that, when executed, cause a machine to estimate a number of times that a first content object has been displayed to visitors of a webpage. As explained in detail above, Gupta compares an actual count of the number of times a URL is requested with the actual number of times an advertisement is displayed to determine if advertising rates being charged are appropriate. Gupta retrieves this information from logs stored in servers. Accordingly, Gupta does not teach or suggest estimating and, indeed, has no need to estimate a number of times that a first content object has been displayed to visitors of a webpage. Thus, Gupta fails to teach or suggest the instructions of claim 70. Accordingly, the rejection of claim 70 and all claims depending therefrom must be reversed.

B. Dependent claims 75, 80, and 85 have been incorrectly rejected under 35 U.S.C. § 103 over the combination of Gupta and Alberts because the combination of Gupta and Alberts lacks at least one element of the claims.

a. Claim 75

Claim 75 recites instructions that cause a machine to estimate a number of times that a first content object has been displayed to visitors by determining a rotation rate for the content object by dividing a total number of times that a webpage was repeatedly requested

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by a number of times that the first content object was included in content files received in

response to the requests and determining a number of times that the first content object has

been displayed to visitors by multiplying an estimate of the number of times that the webpage

has been accessed by the rotation rate. Thus, the instructions of claim 75 facilitate a machine

determining a rotation rate and, thereby, a number of times that a content object has been

displayed when the machine does not have access to the actual rotation rate (e.g., the machine

is operated by a monitoring company that does not have access to the records of a content

provider and/or an advertisement provider).

The Office action admits that Gupta does not teach or suggest "dividing [a] total

number of times that the webpage was requested by [a] number of times that the first content

object was included in the content files in response to requests" and "multiplying the estimate

of the number of times that the webpage has been accessed by the rotation rate." (See Office

Action, page 12). The Office action relies on Alberts to allegedly cure this deficiency of

Gupta. This reliance is in error.

Alberts does not determine a rotation rate for a content object by dividing a total

number of times that a webpage was repeatedly requested by a number of times that the

content object was included in content files received in response to the requests. Alberts

determines ratios between ads based on recorded information about numbers of times per day

that advertisements are to be displayed. (See Alberts, Column 5, lines 7-10). Ratio values

are determined by dividing a high frequency advertisement by a less frequent advertisement.

(See Alberts, Column 5, lines 10-13). For example, in Alberts, an advertisement to be

displayed 100,000 times is compared to another advertisement to be displayed 50,000 to

calculate an ad ratio of 2:1 (i.e., 100,000/50,000). (See Alberts, Column 5, lines 14-19).

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Thus, the ad ratio of Alberts is a comparison of numbers of times that two advertisements are to be displayed. The ad ratio of Alberts is not a rotation rate for an advertisement. Further, the ad ratio of Alberts is not calculated by dividing a total number of times that a webpage was repeatedly requested by a number of times that the advertisement was included in content files received in response to the requests, but rather is calculated by dividing one ad frequency by another ad frequency. The ad ratio of Alberts is determined prior to any display of advertisements because the ad ratio is used to determine when to display advertisements. (See Alberts, Column 4, lines 4-45). In contrast, the rotation rate of claim 75 is determined by dividing a total number of times that a webpage *was* repeatedly requested by a number of times that the content object *was* included in content files received in response to the requests. Thus, the rotation rate of claim 75 is calculated *after* advertisements have been displayed.

Furthermore, Alberts does not determine the number of times that a first content object has been displayed to visitors by multiplying an estimate of a number of times that a webpage has been accessed by the rotation rate. Rather, the methods described in Alberts have no need to multiply an estimate of a number of times that a webpage has been accessed by the rotation rate because Alberts retrieves the actual number of times advertisements have been served directly from the ad server that serves the advertisements. (See Alberts, Column 3, lines 22-25 and Column 4, lines 4-6). The ad server of Alberts displays advertisements according to the ad ratios described above and stores what advertisements have actually been served and how often these advertisements have been served. (See Alberts, Column 4, lines 4-45). Tracking the number of times that an advertisement has been served is not a rotation rate. Thus, the method discussed in Alberts retrieves the actual

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number of times that an advertisement has been displayed without any need to multiply an

estimate of a number of times a webpage has been accessed by a rotation rate. The method of

claim 75 is capable of determining a number of times that a content object has been displayed

without relying on the cooperation of the system performing the insertion of content objects.

Accordingly, Alberts fails to cure the deficiencies of Gupta. The combination of Gupta and

Alberts fails to teach or suggest the method of claim 75. Thus, the rejection of claim 75 must

be reversed.

b. Claim 80

Claim 80 recites a statistical summarization system to estimate a number of times that

a first content object has been displayed to visitors by determining a rotation rate for the

content object by dividing a total number of times that a webpage was repeatedly requested

by a number of times that the first content object was included in content files received in

response to the requests and determining the number of times that the first content object has

been displayed to visitors by multiplying an estimate of the number of times that the webpage

has been accessed by the rotation rate. The Office action admits that Gupta does not teach or

suggest such a system and, instead, relies on Alberts to allegedly cure the deficiencies of

Gupta.

As explained in further detail above, Alberts does not determine a rotation rate for a

content object by dividing a total number of times that a webpage was repeatedly requested

by a number of times that the content object was included in content files received in

response to the requests, but rather Alberts determines ratios between ads based on recorded

information about numbers of times per day that advertisements are to be displayed. The ad

ratio of Alberts is a comparison of numbers of times that two advertisements are to be

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displayed and is not a rotation rate for an advertisement. Furthermore, Alberts does not

determine the number of times that a first content object has been displayed to visitors by

multiplying an estimate of a number of times that a webpage has been accessed by the

rotation rate. Rather, the methods described in Alberts have no need to multiply an estimate

of a number of times that a webpage has been accessed by the rotation rate because Alberts

retrieves the actual number of times advertisements have been served directly from the ad

server that serves the advertisements. Accordingly, Alberts fails to cure the deficiencies of

Gupta. The combination of Gupta and Alberts fails to teach or suggest the method of claim

80. Thus, the rejection of claim 80 must be reversed.

    c. Claim 85

Claim 85 recites estimating a number of times that a first content object has been

displayed to visitors by determining a rotation rate for the content object by dividing a total

number of times that a webpage was repeatedly requested by a number of times that the first

content object was included in content files received in response to the requests and

determining the number of times that the first content object has been displayed to visitors by

multiplying an estimate of the number of times that the webpage has been accessed by the

rotation rate. The Office action admits that Gupta does not teach or suggest such a method

and, instead, relies on Alberts to allegedly cure the deficiencies of Gupta.

However, as explained above, Alberts does not determine a rotation rate for a content

object by dividing a total number of times that a webpage was repeatedly requested by a

number of times that the content object was included in content files received in response to

the requests. Instead, Alberts determines ratios between ads based on recorded information

about numbers of times per day that advertisements are to be displayed. The ad ratio of

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Alberts is a comparison of numbers of times that two advertisements are to be displayed and

is not a rotation rate for an advertisement. Furthermore, Alberts does not determine the

number of times that a first content object has been displayed to visitors by multiplying an

estimate of a number of times that a webpage has been accessed by the rotation rate. Rather,

the methods described in Alberts have no need to multiply an estimate of a number of times

that a webpage has been accessed by the rotation rate because Alberts retrieves the actual

number of times advertisements have been served directly from the ad server that serves the

advertisements. Accordingly, Alberts fails to cure the deficiencies of Gupta. The

combination of Gupta and Alberts fails to teach or suggest the method of claim 85. Thus, the

rejection of claim 85 must be reversed.

C. **Independent claim 70 has been incorrectly rejected under 35 U.S.C. § 101
   because claim 70 is statutory.**

Independent claim 70 was rejected under 35 U.S.C. § 101 as allegedly directed to

non-statutory subject matter as allegedly reading on propagating signals. Independent claim

70 recites a "tangible machine readable medium storing instructions," which is statutory. A

signal is not a storage medium as explained in *In re Nuijten*, 500 F.3d 1346, 1356 (Fed. Cir.

2007). In the *In re Nuijten* decision, the Federal Circuit examined a claim seeking to cover

encoded signals themselves. The Federal Circuit explained that a storage medium having

stored thereon a signal with embedded supplemental data was allowed by the Board of Patent

Appeals, but a claim directed to the signal itself *rather than* directed to the medium storing

the signal was non-statutory under § 101. *Id.* In explaining the procedural history of the

case, the Federal Circuit noted that "[t]he storage medium ... nominally puts the claim into

the statutory category of a 'manufacture.'" *Id.* Thus, given that the storage medium claims

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were not identified as a § 101 problem by the BPAI or the Federal Circuit in *In Re Nuijten*, it

is improper to rely on *Nuijten* as legal authority to reject claims to a storage medium.

Storage media are different in kind from signals. In addressing the claims directed to

signals per se, the Federal Circuit made clear that <u>tangibility</u> is the touchstone of statutory

subject matter in the article of manufacture context in *In re Nuijten*. The Federal Circuit

stated:

> These definitions [of statutory subject matter] address "articles"
> of "manufacture" as being *tangible* articles or commodities. A
> transient electric or electromagnetic transmission does *not* fit
> within that definition [of *tangible* article of manufacture].

(emphasis added). Accordingly, the Federal Circuit ruling that held signals non-statutory did

so on the basis that <u>signals, unlike storage media, are not tangible</u>. Thus, a storage medium,

which is, of course, tangible cannot reasonably be interpreted as a signal, and clearly does not

run afoul of 35 U.S.C. § 101 under the Federal Circuit precedent.

This point was recently confirmed by the Board of Patent Appeals in *Ex Parte Hu*,

App. No. 2010-000151 (BPAI 2012) (published, but not currently made precedential). In that

decision, the Board stated:

> We find that the computer-readable <u>storage medium</u> is
> directed to a tangible storage medium, which can be read by a
> computer. While a computer-readable medium is broad enough
> to encompass both tangible media that store data and intangible
> media that carry a transitory, and propagating signal containing
> information, a computer readable <u>storage medium</u> is
> distinguished therefrom as it is confined to tangible media for
> storing data. Therefore, because the cited claims are limited to
> a tangible medium within one of the four statutory classes of 35
> U.S.C. § 101, they are directed to statutory subject matter.

(<u>Id</u>. At Page 3) (emphasis added). Accordingly, the case law enunciated by the Federal

Circuit and now followed by the BPAI provides that *storage media are directed to statutory*

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subject matter and do **not** cover signals. Since claims 70-85 are directed toward a tangible

storage medium, claims 70-85 do not read on signals per se and are statutory. Thus, the

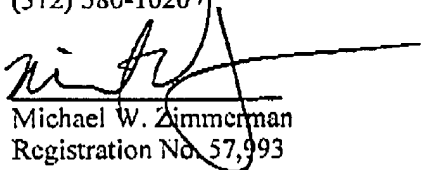Examiner's position is clear legal error and must be reversed.

V.   Conclusion

In view of the foregoing remarks all of the rejections made in the final Office action

are in error and must be overturned.

Respectfully submitted,

HANLEY, FLIGHT & ZIMMERMAN, LLC.
150 S. Wacker Dr. Suite 2100
Chicago, Illinois 60606
(312) 580-1020

By: _____   October 3, 2012

Michael W. Zimmerman
Registration No. 57,993

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VI.   Claims Appendix

1.   A system for estimating a number of times digital content has been displayed via a network, the system comprising:

an estimating device to determine an estimate of a number of times that a webpage has been accessed;

a prober to repeatedly request the webpage and, in response, receive content files; and

a statistical summarization system including a processor to determine a number of times that a first content object is included in the content files received in response to the requests, determine a total number of times that the webpage has been requested, and estimate the number of times that the first content object has been displayed to visitors of the webpage based on (1) the number of times that the first content object was included in the content files received in response to the requests, (2) the total number of times that the webpage was requested, and (3) the estimate of the number of times that the webpage has been accessed.

2.   The system of claim 1, wherein the estimating device is to receive the estimate of the number of times that the webpage has been accessed from at least one proxy cache server.

3.   (Cancelled).

4.   The system of claim 1, further comprising a sampling device that includes:

an extractor to locate a fragment of the web page that includes the first content object; and

a classifier to perform a structural analysis of the fragment to classify the digital content.

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5.   (Cancelled)

6.   A method of estimating a number of times digital content has been displayed via on a network, the method comprising:

repeatedly requesting a webpage and, in response, receiving content files;

determining a number of times that a first content object is included in the content files received in response to the requests; and

estimating, with a processor, the number of times that the first content object has been displayed to visitors of the webpage based on (1) the number of times that the first content object was included in the content files received in response to the requests, (2) a total number of times that the webpage was requested, and (3) an estimate of the number of times that the webpage has been accessed.

7-69. (Cancelled)

70.   A tangible machine readable medium storing instructions that, when executed, cause a machine to at least:

repeatedly request a webpage;

determine a number of times that a first content object is included in content files received in response to the requests; and

estimate the number of times that the first content object has been displayed to visitors of the webpage based on (1) the number of times that the first content object was included in the content files received in response to the requests, (2) a total number of times that the webpage was requested, and (3) an estimate of the number of times that the webpage has been accessed.

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71.   A machine readable medium as defined in claim 70, wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from a proxy.

72.   A machine readable medium as defined in claim 70, wherein the instructions stored on the machine readable medium are to be executed by an advertising prevalence system.

73.   A machine readable medium as defined in claim 70, wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from at least one panelist computer.

74.   A machine readable medium as defined in claim 70, wherein the content object is an advertisement.

75.   A machine readable medium as defined in claim 70, wherein the instructions stored on the machine readable medium cause the machine to estimate the number of times that the first content object has been displayed to visitors by:

determining a rotation rate for the content object by dividing the total number of times that the webpage was repeatedly requested by the number of times that the first content object was included in the content files received in response to the requests; and

determining the number of times that the first content object has been displayed to visitors by multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate.

76.   A system as defined in claim 1, wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from a proxy.

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77.   A system as defined in claim 1, wherein the system comprises an advertising prevalence system.

78.   A system as defined in claim 1, wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from at least one panelist computer.

79.   A system as defined in claim 1, wherein the content object is an advertisement.

80.   A system as defined in claim 1, wherein the statistical summarization system is to estimate the number of times that the first content object has been displayed to visitors by:

determining a rotation rate for the content object by dividing the total number of times that the webpage was repeatedly requested by the number of times that the first content object was included in the content files received in response to the requests; and

determining the number of times that the first content object has been displayed to visitors by multiplying the estimate of the number of times that the webpage has been accessed by the rotation rate.

81.   A method as defined in claim 6, wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from a proxy.

82.   A method as defined in claim 6, wherein the method is performed by an advertising prevalence system.

83.   A method as defined in claim 6, wherein at least a portion of the estimate of the number of times that the webpage has been accessed is received from at least one panelist computer.

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84.   A method as defined in claim 6, wherein the content object is an

advertisement.

85.   A method as defined in claim 6, wherein estimating the number of times that

the first content object has been displayed to visitors comprises:

determining a rotation rate for the content object by dividing the total number of times

that the webpage was repeatedly requested by the number of times that the first content object

was included in the content files received in response to the requests; and

determining the number of times that the first content object has been displayed to

visitors by multiplying the estimate of the number of times that the webpage has been

accessed by the rotation rate.

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